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EXAMINER

RAHMJOO, MANUCHER

ART UNIT	PAPER NUMBER
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2624

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/058,693	Applicant(s) SCHICK ET AL.	
	Examiner Mike Rahmjoo	Art Unit 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-15 and 32-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-15 and 32-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/1/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6,8-15,32-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101.

... a signal does not fall within one of the four statutory classes of Sec. 101.

... signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of Sec. 101.

Claims 6, 8-10, 31- 32,36,38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 6, 8-10, 31- 32,36,38 define a computer readable carrier comprising computer executable instructions with descriptive material.

A carrier is defined as "a wave having at least one characteristics that may be varied from a known reference value by modulation. Examples of carriers are a sine

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wave and a recurring series of pulses" in the IEEE standard dictionary of electrical and electronic terms, 6th Edition. While "functional descriptive material" may be claimed as a statutory product (i.e., a "manufacture") when embodied on a tangible computer readable medium, a carrier embodying that same functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, "carrier" or "waves and pulses" as per the definition provided above, is a form of energy and a signal, in the absence of any physical structure or tangible material.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Section IV.C, reads as follows:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. Diehr, 450 U.S. at 187, 209 USPQ at 8 ("application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection."); Benson, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it "has no substantial practical application").

To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

The claimed invention "transforms" an article or physical object to a different state or thing.

The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

Claims 1- 5, 33-35, 42-44 (as evident through claims 6 and 32 which are directed to computer implemented steps comprising computer executable instructions (a

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computer program)) are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 1- 5, 33-35, 42-44 recites functional descriptive material on a computer readable medium. However, the program/algorithm itself merely manipulates data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application. A practical application exists if the result of the claimed invention is "useful, concrete and tangible" (with the emphasis on "result")(Guidelines, section IV.C.2.b). A "useful" result is one that satisfies the utility requirement of section 101, a "concrete" result is one that is "repeatable" or "predictable", and a "tangible" result is one that is "real", or "real-world", as opposed to "abstract" (Guidelines, section IV.C.2.b)). Claims 1- 5, 33-35, 42-44 merely manipulates data without ever producing a useful, concrete and tangible result.

In order to for the claimed product to produce a "useful, concrete and tangible" result, recitation of one or more of the following elements is suggested:

- The manipulation of data that represents a physical object or activity transformed from outside the computer.
- A physical transformations outside the computer, for example in the form of pre or post computer processing activity.
- A direct recitation of a practical application;

Processing of the image file copies does not clearly conform of any manipulation of data that represents a physical object or activity transformed from outside the

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computer; a physical transformations outside the computer, for example in the form of pre or post computer processing activity, or a direct recitation of a practical application.

Applicant is also advised to provide a written explanation of how and why the claimed invention (either as currently recited or as amended) produces a useful, concrete and tangible result.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 44 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

As per new claim 44 applicant claims "receiving the removable storage medium inserted by the user". Paragraphs [0031] and [0055] of the specification recite "As a result, the images, having been reduced in size for TV viewing or viewing on the available monitor, may be stored on a small, inexpensive, removable media such as a standard 3.5 inch Floppy Disk. Regardless of the media type used, this pre-processing step facilitates highly efficient use of the media by eliminating information which exceeds the available resolution of the TV or monitor to be used for viewing the images. In contrast, prior art approaches store the full-resolution image on the removable media" and "First, the invention addresses the complete process of

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selecting and arranging digital images into an album, preprocessing the images for efficient storage onto a removable medium, transferring the album images to a removable medium, and viewing the images” respectively. As obviated said feature as claimed is not found throughout the specification as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per new claim 44 applicant claims “receiving the removable storage medium inserted by the user”. It is unclear what is receiving said “medium” and how any medium may be received.

Claim Objections

Claim 6 is objected to because of the following informalities:

As per claim 6 applicant recites a “carrier”. Applicant further recites “the oscillator 84 has a frequency equal to four times the color sub- carrier frequency of the TV standard being employed” in paragraph [0080]. Said sub- carrier frequency is different to what is claimed. Examiner fails to find said limitation as being described throughout

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the specification Therefore said claim may contain subject matter which was not described in the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 6, 8- 15 and 32- 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geigel et al (US PUB 2002/0122067), hereinafter, Geigel in view of Wahino et al (U RE38079), hereinafter, Washino further in view of Schwab et al (US PAP 2004/ 0250083), hereinafter, Schwab.

As per claims 1, 6, 11, 32, 34, 37, 38 and 40 and as to the broadest reasonable interpretation by examiner, Geigel teaches Inputting a group of images for which corresponding image files are available see for example page 5 paragraph [0077] for the inputting collection of images that are placed in an album;

displaying on a first display device, to a user, the group of images for which corresponding images are available see for example the abstract, figure 1 and page 5 paragraph [0077] through the use of album pages;

receiving user input from the user by which the user selects one or more images from the group see for example page 1 paragraph [0010] for assigning image objects to a page based on user preferences and page 3 paragraph [0056] for the user specified preferences;

prompting the user to select a plurality of images from the group see for example page 1 paragraph [0010] for selection based on user preferences;

prompting the user to save the selected images as digital photo album of images see for example the abstract and page 3 paragraph [0056];

receiving an instruction from the user to save the selected images to the storage medium as an album of images see for example page 5 paragraph [0078];

making a copy of each image file that corresponds to one of the selected images to result in image file copies see for example page 4 paragraph [0061];

making a contact sheet image (see for example page creator module 126 of figure 7) including a user-selected album title having a font (see for example figures 19-22 which have alpha numeric labels) and color (see for example page 6 paragraph [0080]) selected by the user, the contact sheet image further including an album tile representations of the one or more images contained in the album see for example page 3 paragraph [0056] where user preferences are applied.

However, Geigel does not teach compressing the image file copies; the album is for viewing on the television different than the first display device; processing the image file copies to tailor the selected images according to memory size constraints of the removable storage medium and according to one or more display characteristics of the

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television; and saving, to the removable storage medium, the album of images comprising the compressed image file copies that correspond to the selected images, wherein the album of images is transferable via the removable storage medium to the set top box for display on the television.

Washino teaches compressing the image file copies see for example column 4 lines 45- 50;

the album is for viewing on the television different than the first display device see for example column 1 lines 15- 20 and column 4 lines 1- 5;

processing the image file copies to tailor the selected images according to memory size constraints of the removable storage medium and according to one or more display characteristics of the television. see for example the abstract wherein a program is translated into a variety of graphics or television formats and fig. 4 wherein any of blocks 100, 102 , 134 and 104 (removable HD) are processed through processor 110 to output graphics (eg. RGB) or television formats (eg. Video);

saving to the removable storage medium, the album of images comprising the compressed image file copies that correspond to the selected images (see for example column 4 lines 45- 50) , wherein the album of images is transferable via the removable storage medium to the set top box (fig. 7 blocks 218, 220, 234 or 242 corresponding to the set top box) for display on the television see for example column 17 lines 30- 32 and fig. 7.

Geigal and Washino do not teach receiving second input from the user indicating a preferred order of display for the selected images as a slideshow.

Schwab teaches receiving second input from the user indicating a preferred order of display for the selected images as a slideshow see for example paragraph [0077] and [0087] for the sequential and predetermined displaying of text and image information corresponding to preferred order of display for the selected images as a slideshow and VGA to NTSC or PAL conversion corresponding to different display types.

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Schwab into the modified device of Geigel to provide converting different display formats and compression of images using advanced image data compression to provided realistic image rendition and rapid communication response time and therefore make and use the device according to the latest state of the art technology see for example paragraph [0010].

As per claims 2, and 12 Geigel teaches making a contact sheet image (see for example page creator module 126 of figure 7) including a user-selected album title having a font (see for example figures 19- 22 which have alpha numeric labels) and color (see for example page 6 paragraph [0080]) selected by the user, the contact sheet image further including an album tile (index of fig. 11) representations of the one or more images contained in the album see for example page 3 paragraph [0056] where user preferences are applied.

As per claims 3, 8, and 13 Schwab teaches automatically resize the one or more image file copies so that the one or more selected images, when displayed, will have a resolution not exceeding a resolution required for optimal viewing on the television

(Vga into NTSC or PAL) see for example paragraph [0077] and [0087].

As per claims 4, 9, and 14 Geigel teaches prompting the user to make one or more modifications to any of the selected images see for example page 1 paragraph [0010] wherein user implements preferences to images; and automatically adjust one or more of the image file copies to include one or more modifications see for example page 3 paragraph [0054] and page 4 paragraphs [0059- 0061] wherein automatic page distribution and duplicate detection is performed; and in the saving step, ensuring that the adjusted image file copies are saved as compressed adjusted image file copies see for example figure 1 and page 3 paragraphs [0056]- [0057] wherein subsequent use of the system by a particular user is done through implementation of user preferences through album automation system and page 4 paragraph [0059] wherein a page layout algorithm must distribute the images amongst a set of pages and then layout the images on each individual page which corresponds to adjusted image file copies as being saved as compressed adjusted image file copies on each individual page.

As per claims 5, and 10 and in light of rejection of claim 1 Geigel teaches saving, to the removable storage medium, a file that contains parameters of the album, wherein the file allows a user to automatically recreate the album for further duplication or modification see for example figure 1 and page 3 paragraphs [0056]- [0057] wherein implementation of user preferences is done through album automation system which can be repeated by subsequent use of the system and the output can be produced on variety of photo delivery media e.g. picture CD media.

As per claim 15 and in light of the rejections made above Geigel teaches saving,

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to the removable storage medium, a link that allows a user to view the image files that are stored on the removable storage medium as the digital photo album of images see for example claim 2 on page 12.

As per claims 33, 36 and 39 Schwab teaches the first display device is a computer monitor see for example paragraph [0077].

As per claims 35 and 41 Schwab teaches the television has an aspect ratio (inherent to NTSC or PAL), and wherein the processing of the image file copies comprises, for each of one or more of the selected images, adding fill space up to the aspect ratio of the television see for example paragraph [0077] the space unused at the sides and the bottom of the screen.

As per claim 42 Washino teaches the set top box is a stand alone set top box requiring no connection to a separate computer see for example fig. 7 blocks 218, 220, 234 or 242 corresponding to the set top box.

As per claim 43 Geigel teaches flash memory media see for example paragraph [0056] and cd media see for example paragraph [0057].

As per claim 44 and as to the broadest reasonable interpretation by examiner and in light of the rejection of claim 1, Geigel implicitly teaches a click input from the user corresponding to for example user action (e.g., a click) in [0010- 0011] and input from the user (e.g., a click) in [0055] and the user amending the previous preferences (e.g, a click) in paragraph [0056].

Response to Arguments

Applicant's arguments filed 02/28/2007 have been fully considered but they are not persuasive.

In reply to applicant's remarks on page 10-11, wherein applicant recites "the Examiner stated that claim 1, for example, recited a set-top box and a television, but claim 1 did not require a set-top box or a television in order to perform the method step" and " but indeed performing claim 1 does not require the television or the set-top box; It requires only processing "image file copies" according to the "size constraints" **and** "display characteristics" of a set-top box and a television, respectively".

Examiner respectfully disagrees.

Examiner points out to:

1) claim 1 which recites "saving to the removable storage medium, the album of images comprising the compressed image file copies that correspond to the selected images, wherein the album of images is transferable via the removable storage medium to the set top box for display on the television". Therefore "set top box " is clearly recited and required as well.

2) performing each and every step of method claim 1 requires performing steps a- j. Saving and transferring of the images via the removable storage medium to said "box" is clearly one of said steps.

3) performing claim 1 is made possible through the display characteristics of the television (step h) and not a "set top box". However, no such requirement is claimed for

said "box". Examiner would recommend making any changes seen proper as to further distinguish said "set top box".

Applicant further argues on page 11 "there is no discussion of a set-top box in Washino, or using a removable storage medium to transfer an album to a set-top box for display on a television" and that "FIG. 7 of Washino is a sophisticated video production system implemented by a PC that receives broadcast and satellite signals, processes those signals, and saves those signals to a video recorder".

Examiner respectfully disagrees.

Examiner points out to the earlier arguments which were raised which negate the requirement of a "set top box" in order to perform the method step of claim 1. Examiner is therefore at loss what applicant is arguing, due to the contradictory remarks which are made. However, as to the broadest reasonable interpretation by examiner and due to the fact that there are no requirements for said "set top box" examiner elaborates on portions of Washino which are made of the record.

As per applicant's analogy above which recites " Washino is a sophisticated video production system implemented by a PC that receives broadcast and satellite signals, processes (corresponding to the same processing as claimed in step (J) and as pointed out in current OA (office action) e.g., graphics (e.g., RGB) or television formats (e.g., Video)) those signals, and saves (corresponding to compressing and saving as claimed in steps (i- j) and as pointed out in current OA in column 4 lines 45-50) those signals to (corresponding to transferring) a video recorder (broadly

corresponding to set top box as well as the block recited pertaining to fig. 7 which perform image manipulations and display various formats)".

Applicant continues with reciting his observations of the prior art individually on pages 12- 13 and argues same issues as raised earlier. Accordingly, examiner responds using the same rational.

In response to applicant's arguments on page 15 "a program is translated into a variety of formats" is present in the lines 3- 5 of the abstract. Saving to the removable storage medium, the album of images comprising the compressed image file copies that correspond to the selected images (broadly corresponding to images which are stored on removable medium and compressed in column 4 lines 45-50) , wherein the album of images is transferable via the removable storage medium to the set top box (fig. 7 blocks 218, 220, 234 or 242 corresponding to the set top box; block 242 for example reads on applicant's claimed "box") for display on the television see for example column 17 lines 30- 32 and fig. 7.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues the combination of the references made of the record.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the background of the invention explains video production systems which integrates dedicated equipment supplied by various manufacturers, enabling a consumer to produce and edit video material using a PC to address economic aspects is recited in columns 1- 2.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6961514 teaches a system and method for communicating an image to a removable media device (*corresponding to a set top box*) includes communicating the image from an image capture device to the removable media device over a wireless connection. The communicated image is stored in memory on the removable media device, and the stored image is deciphered. The deciphered image is recorded on removable media, the recorded image capable of being accessed on removable media device. In an additional aspect of the present invention, a method for communicating and formatting an image from an image capture device includes initiating a connection between an image capture device and an image storage device

and querying the image storage device for a supported format. If the supported format differs from an image format, the image is deciphered to the supported format and communicated from the image capture device to the image storage device.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiry

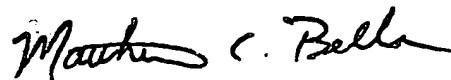
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Rahmjoo whose telephone number is 571-272-7789. The examiner can normally be reached on 8 AM- 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mike Rahmjoo

March 14, 2007



**MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600**